

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA

v.

ELIZABETH ANN PIERCE
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1:18-CR-00388-ER-1

RESPONSE TO THE GOVERNMENT’S MOTIONS IN LIMINE

The Government moves this Court, *in limine*, to allow it to introduce certain “other act” evidence at trial, pursuant to Fed. R. Evid. 402, or alternatively, Fed. R. Evid. 404(b); to preclude Ms. Pierce from eliciting at trial any evidence related to Quintillion’s “operations or financial status” after her departure as its Chief Executive Officer; to preclude Ms. Pierce’s cross-examination at trial of a paralegal regarding any attorney-client privileged information; and to preclude Ms. Pierce’s cross-examination at trial of three witnesses outside of the scope of their direct examinations. (Gov’t’s Mot. Lim. 5, ECF No. 31.)

I. “Other Acts” Evidence

Ms. Pierce concedes the accuracy of the Government’s recitation of the relevant authority on the issue; however, she submits that the evidence that

the Government proposes to introduce at trial would be irrelevant, unduly prejudicial, and improper character evidence.

The evidence would demonstrate nothing more than two arms-length agreements between Ms. Pierce and three willing parties, all of which were wholly unrelated to the specific allegations in the indictment, and therefore, irrelevant. See Fed. R. Evid. 402.

In the event this Court finds that the evidence is relevant and admits it at trial, the jury's hearing two instances of Ms. Pierce's inability to settle any debt related to Quintillion, even with a limiting instruction from the Court, would render it unable to consider the allegations with which she is charged in the indictment fairly, inferring that every financial transaction in which she participates—charged and uncharged—is a fraud. Therefore, the evidence, if this Court admits it at trial, would be unfairly prejudicial and would serve no purpose other than to unjustly portray Ms. Pierce as a fraudster. See Fed. R. Evid. 403, 404(b).

II. Quintillion's Operations or Financial Status

Ms. Pierce has no opposition to the Government's motion that she not present or elicit evidence of Quintillion's trade secrets unnecessarily, or its financial condition for the purpose of jury nullification. However, Ms. Pierce

submits that Quintillion's operations and financial condition, before and after her departure, otherwise are relevant to the allegations in the indictment, and due process requires that this Court permit her inquiry into those matters.

III. Attorney-Client Privilege

Ms. Pierce has no opposition to the Government's motion that she not inquire into issues that are protected by the attorney-client privilege during her cross-examination of a paralegal from a law firm that serves as Quintillion's outside counsel; however, she submits that she should be able to thoroughly cross-examine that witness on all assertions and implications resulting from that testimony, within the scope of the direct examination.

IV. The Scope of Direct Examination

Ms. Pierce has no opposition to the Government's motion that she not cross-examine two law enforcement agents beyond the scope of their direct examinations; however, she submits that she should be able to thoroughly cross-examine those witnesses on all assertions and implications resulting from that testimony, within the scope of direct examination.

Date: February 1, 2019

Respectfully submitted,

s/ Joshua Sabert Lowther, Esq.

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